

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2016-0046
)	
THE CITY OF TROY,)	
MISSOURI,)	
)	
)	FINDINGS OF VIOLATION AND
)	ADMINISTRATIVE ORDER FOR
)	COMPLIANCE ON CONSENT
)	
Respondent,)	
)	
)	
Proceeding under Sections 309(a)(3) of the)	
Clean Water Act, 33 U.S.C. § 1319(a)(3))	
_____)	

I. Preliminary Statement

1. The FINDINGS OF VIOLATION are made and ORDER ON CONSENT ("Order") is issued by the U.S. Environmental Protection Agency ("EPA") to the City of Troy, Missouri ("City" or "Respondent"), pursuant to the authority vested in the Administrator of EPA by Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a), as amended. This authority has been delegated by the Administrator of EPA to the Regional Administrator of EPA, Region 7, and further delegated to the Director of Region 7's Water, Wetlands, and Pesticides Division.

2. EPA, together with the City, enter into this Section 309(a)(3) Order for Compliance on Consent in order to carry out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

3. It is the parties' intent through this agreement to address discharges of pollutants by the City into the waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

4. By entering into this Order, Respondent (1) consents to and agrees not to contest EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions

required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein. Respondent also waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

II. Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.

6. The CWA prohibits the discharge of "pollutants" from a "point source" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

7. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

8. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes the EPA to issue administrative orders to require persons to take those actions necessary to comply with the requirements of the CWA including the terms and conditions of a permit issued pursuant to Section 402 of the CWA.

9. The Missouri Department of Natural Resources ("MDNR") is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the implementing regulations, and a Memorandum of Understanding dated October 30, 1974. EPA maintains concurrent enforcement authority with authorized state programs for violations of the CWA.

III. EPA Findings

Findings of Fact and Law

10. The City of Troy is a political subdivision of the state organized under the laws of Missouri, and as such is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. Since 1973, the City has owned and operated a wastewater treatment facility ("WWTF") located off of Highway 47. In 2007, the City constructed a second WWTF located in the Southeast portion of the City.

12. The City's Hwy 47 WWTF discharges pollutants into Town Branch, a tributary of the Cuivre River. The City's Southeast WWTF discharges pollutants into the Cuivre River. Town Branch and the Cuivre River are "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

13. Effluent from each of the City's WWTFs is a "pollutant" as defined by Section 502(6) of the CWA, 33 U.S.C. § 502(6).

14. Each of the City's WWTFs is a "point source" that "discharges pollutants" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

15. The City's discharge of pollutants from its WWTFs requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

16. MDNR issued NPDES Permit No. MO-0054623 (hereafter "2005 NPDES permit") to the City, effective March 18, 2005 and expiring March 17, 2010 for discharges from its Hwy 47 WWTF into the Cuivre River through Outfall 002 (primary-treated overflow from peak flow basin) and into Town Branch through Outfall 003 (secondary-treated plant effluent). MDNR reissued NPDES Permit No. MO-0054623 (hereafter "2012 NPDES permit") to the City, effective December 1, 2012 and expiring March 31, 2014, for discharges from its Hwy 47 WWTF into Town Branch through Outfall 003. MDNR has administratively extended this permit. MDNR issued NPDES Permit No. MO-0131296 (hereafter "2014 NPDES permit") to the City effective February 1, 2014 and expiring January 31, 2019, for discharges from its Southeast WWTF into the Cuivre River through Outfall 001.

17. On or about December 2, 2011, the EPA submitted a Request for Information pursuant to Section 308 of the Clean Water Act (33 U.S.C. § 10318) to the City requesting information related to the operation of the City's Hwy 47 WWTF and received the City's response to that request on or about December 16, 2011.

18. On or about February 23, 2015, MDNR issued a Notice of Violation #3754 regarding discharges in violation of the State Water Quality Standards due to untreated bypasses at the City of Troy Hwy 47 WWTF on December 9 & 10, 2014.

19. On or about April 29, 2015, the EPA submitted a Request for Information pursuant to Section 308 of the Clean Water Act (33 U.S.C. § 1318) to the City requesting information related to the operation of the City's Hwy 47 WWTF and received the City's response to that request on or about May 22, 2015.

20. On November 16 - 20, 2015, the EPA inspected both of the City's WWTFs under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

Findings of Violation

21. The facts stated in Paragraphs 1 through 20, above, are herein incorporated.

Count I **Effluent Limit Violations**

22. The City's NPDES permits for discharges from the City's Hwy 47 WWTF and the Southeast WWTF establish effluent limitations for various pollutants, including but not limited to Carbonaceous Biochemical Oxygen Demand ("CBOD"), Total Suspended Solids ("TSS"), Ammonia, Dissolved Oxygen, Copper, and E.coli.

23. EPA's review of Discharge Monitoring Reports ("DMRs") submitted to MDNR covering the months of January 2012 through December 2015 revealed the City discharged pollutants in excess of the effluent limits set forth in its NPDES permits for the Hwy 47 WWTF on at least 76 occasions as detailed in Appendix A attached hereto. EPA's review of DMRs submitted to MDNR from February 2014 through September 2015 revealed the City discharged pollutants in excess of the 2014 NPDES permit limits for its Southeast WWTF on at least 4 occasions as detailed in Appendix B attached hereto.

24. The City's discharge of wastewater into waters of the U.S. in excess of the effluent limitations is a violation of the terms and conditions of its NPDES permits issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and as such, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count II **Monitoring Violations**

25. The City's NPDES permits for discharges from both of the City's WWTFs include requirements to monitor flow, CBOD₅, TSS, Ammonia, E. coli, Oil and Grease, chlorine, dissolved oxygen, lead and copper.

26. EPA's review of DMRs submitted to MDNR covering the months of January 2012 through December 2015 revealed the City failed to comply with the monitoring requirements set forth in its NPDES permits for the City's Hwy 47 WWTF on at least six (6) occasions and failed to monitor as required by the NPDES permit for the Southeast WWTF on at least seven (7) occasions as detailed in Appendix C attached hereto.

27. The City's failure to comply with the monitoring requirements is a violation of the terms and conditions of its NPDES permits issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Count III

Unauthorized Discharges of Untreated and Partially treated Wastewater

28. The City's 2005 NPDES permit for discharges from the Hwy 47 WWTF authorizes the City to discharge pollutants only from specified point sources, identified in the NPDES permits as "Outfall #002" and "Outfall #003," to specified waters of the United States only after the wastewater was treated in the WWTF, subject to the limitations and conditions set forth in the NPDES permit. The City's 2012 NPDES permit for discharges from the City's Hwy 47 WWTF explains that discharges from Outfall #002 are no longer authorized, shall be subject to 40 CFR 122.41(m) and shall be reported according to 40 CFR 122.41(m)(3)(i) & (ii).

29. Special Condition 9 of the 2012 NPDES permit and Special Condition 10 of the 2014 NPDES permit state that bypasses are not authorized and are subject to 40 CFR 122.41(m). If a bypass occurs, the permittee shall report in accordance to 40 CFR 122.41(m)(3)(i), and with Standard Condition, Part I, Section B, subsection 2.b. of the 2012 and 2014 NPDES permits.

30. EPA's review of SSO and bypass reports submitted to MDNR revealed the City discharged over 26,000,000 gallons of partially treated wastewater containing sewage from unauthorized locations at the Hwy 47 WWTF into waters of the U.S. on the following dates:

- a. April 12 & 19, 2013;
- b. February 8, March 14, April 3, June 10, September 10, October 2, December 9 and December 23, 2014; and
- c. January 3, April 10, June 9, June 25, July 8, July 20, November 17, November 27, December 14, December 23, and December 26, 2015.

31. EPA's review of SSO and bypass reports submitted to MDNR covering the months of January 2012 through December 2015 revealed the City of Troy discharged a total of 2,997,250 gallons of wastewater containing untreated sewage from unauthorized locations to waters of the United States on 15 occasions as specified below:

- a. December 19, 2012;
- b. March 17, April 10, May 31, September 18, and October 23, 2013;
- c. April 3, April 29, May 11, May 12, and October 2, 2014; and
- d. March 26, November 17, December 26, and December 28, 2015.

32. Each discharge of pollutants from any location other than a permitted outfall, constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

IV. Order for Compliance

33. This Order supersedes the FINDINGS OF VIOLATION and ORDER FOR COMPLIANCE ON CONSENT, Docket No. CWA-07-2006-0253, which terms of compliance are hereby replaced by the provisions set forth below.

34. Based on the Findings of Fact and Law and Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), EPA hereby ORDERS, and the City hereby AGREES to take, the actions described below:

35. Immediately upon receipt of this Order, the City shall take whatever actions are necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all the applicable requirements of its Permits.

36. *Schedule for Compliance* – Within 90 days of the effective date of this Order, the City shall submit to the EPA, for review and approval, with a copy to MDNR, a detailed Schedule for Compliance (“Schedule”) with interim and final actions as set forth below, to be taken by the City to comply with all terms, limitations, and conditions of its Permits.

37. The Schedule shall, at a minimum, include a detailed plan and schedule for correction of the deficiencies, installation of equipment and/or construction of new facilities to ensure all discharges from the City’s WWTFs comply with the secondary treatment and water quality-based limitations in the City’s applicable Permit. The schedule for implementing the proposed modification(s) must include interim milestones to be reported on a quarterly basis, unless noted otherwise below, and shall in no event exceed the deadlines set forth below:

- a. The City shall submit a detailed Schedule, for review and approval by the EPA pursuant to Paragraph 38, and shall identify one or more City personnel, with contact information, for the purposes of communications regarding this Order; and
- b. The detailed Schedule shall provide for correcting all deficiencies and meeting all applicable NPDES permit limitations as expeditiously as possible, but in no case later than October 31, 2019.

38. *Approval of Schedule and Implementation* – Upon receipt, the EPA will review the Schedule submitted by the City and, after consultation with the MDNR, shall approve the Schedule or require modification and resubmission of portions or all of such submittals pursuant to Paragraph 39 below. Upon written approval by the EPA, the City shall implement the provisions of the Schedule as a condition of compliance with this Order.

39. *Modification* – If required by the EPA, the City shall within forty-five (45) days of receipt of any written comments from the EPA regarding the Schedule, make modifications and changes to it as directed by the EPA, and resubmit the Schedule to the EPA with a copy to the MDNR. Upon request, the EPA may grant a longer period of time for resubmission of such documents.

40. The City shall at all times comply with requirements established by the State of Missouri and the MDNR regarding repair, construction and operation of facilities associated with the City’s WWTFs, including, but not limited to, any requirements for work to be performed by certified or licensed professional engineers, submission and approval of plans and specifications, and construction and operation permitting. In developing plans and schedules required by this

Order, the City shall allocate adequate time and resources to comply with applicable State requirements.

Quarterly Reporting

41. Beginning April 28, 2017, the City shall submit quarterly reports (by no later than January 28, April 28, July 28 and October 28 each year) to the EPA, with a copy to the MDNR, until the City is notified by the EPA that the reporting may cease or this Order is terminated pursuant to Paragraph 52 below, that describe the actions taken by the City to comply with the terms of this Order. Each quarterly report shall cover the three month period ending the last day of the month prior to the month the report is due and shall include, at a minimum, the following information:

- a. *Progress Report* – a description, with dates, of activities completed under this Order within the reporting period, including a clear statement as to whether each action identified in the Schedule for the reporting period was started on time, was successfully completed on time, the percentage complete of actions underway but not completed and the results achieved;
- b. *Anticipated Actions* – a brief list of the activities planned to comply with terms of this Order during the next quarterly reporting period and a statement as to whether any delays are expected, and if so, an explanation of the reason for the delay, the anticipated length of delay and the actions the City is taking to remain on the Schedule (*Note:* a delay in completing any item under the Schedule does not relieve the City of the responsibility to meet the final compliance date under the Schedule, which may be extended only upon written consent by the EPA, after consultation with the MDNR); and
- c. *DMRs* – submit to the EPA a copy of the signed DMRs (or a copy of the eDMRs) for the three-month period covered by the report (*Note:* as required by the NPDES Permits, the City must submit the original signed DMRs or electronically certified eDMRs to the MDNR on a monthly basis).
- d. *Overflow/Bypass Reports* – submit to the EPA a listing of all Overflow/Bypass reports submitted to MDNR as required by Special Conditions 9 and 10 of the City's NPDES Permits.

42. Consistent with the City's NPDES Permits, Special Conditions 9 and 10, the City acknowledges that reports of bypasses and overflows made to MDNR are available to the public. The City also acknowledges the necessity for transparency of such noncompliance and therefore will make available to the public via the City's website, <http://cityoftroymissouri.com/>, information describing the date and location of a SSO event that discharges to a water of the U.S. within 24 hours of knowledge of the event.

Certification

43. All submissions made by the City to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.2:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing submissions of false information.

Submittals

44. All documents, including certifications, required to be submitted to EPA by this Order, shall be submitted by electronic mail to:

dillard.wayne@epa.gov

Wayne Dillard, P.E., or his successor
U.S. Environmental Protection Agency – Region 7
Water, Wetlands and Pesticides Division
11201 Renner Boulevard
Lenexa, Kansas 66219.

Electronic submissions will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically shall be submitted in hard-copy to the address provided in this Paragraph.

45. A copy of documents required to be submitted to MDNR by this Order, shall be submitted by mail to:

Paul Dickerson, or his successor
Chief, Water Pollution Compliance and Enforcement Section
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

and

Dorothy Franklin, or her successor
Director
Missouri Department of Natural Resources
St. Louis Regional Office
7545 S. Lindbergh

Suite 210
St. Louis, Missouri 63125

V. General Provisions

Effect of Compliance with the Terms of this Order

46. Compliance with the terms of this Order shall not relieve the City of liability for, or preclude the EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

47. The City shall comply with all other applicable laws, regulations, standards, and requirements contained in any applicable local, state and federal pretreatment laws, regulations, standards, and requirements including any such laws, regulations, standards, or requirements that may become effective during the term of this Order.

48. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order and the City retains the right to provide evidence in its defense regarding any violation of this Order. Issuance of this Order shall not be deemed an election by the EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever. Agreement to this Order shall not be a waiver of defenses of the City for any violation of this Order, other than the defense concerning EPA's authority or jurisdiction to issue or enforce this Order.

Access and Requests for Information

49. Nothing in this Order shall limit the EPA's right to obtain access to, and/or to inspect the City's facility, and/or to request additional information from the City, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

50. If any provision or authority of this Order, or the application of this Order to the City, is held by federal judicial authority to be invalid, the application to the City of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

51. This Order shall be effective upon receipt by the City of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

Termination

52. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

Signatories

53. The undersigned for each party has the authority to bind each respective Party to the terms and conditions of this Order. The Order may be signed in part and counterpart by each Party.

For the Complainant, United States Environmental Protection Agency, Region 7:

Issued this ____ day of _____, 2016.

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency – Region 7

Elizabeth Huston
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 7

For the Respondent, City of Troy, Missouri:

Mark A Cross
Signature

1/18/2017
Date

MARK A. CROSS
Name

MAYOR
Title

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Administrative Order for Compliance on Consent to the Regional Docket Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance on Consent by certified mail, return receipt requested, to:

Honorable Mark Cross
Mayor, City of Troy
800 Cap au Gris
Troy, Missouri 63379

and by first class mail to:

Paul Dickerson
Chief, Water Pollution Compliance and Enforcement Section
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176.

Date